



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Memorial Compounding Pharmacy

Respondent Name

Old Republic Insurance Company

MFDR Tracking Number

M4-17-0606-01

Carrier's Austin Representative

Box Number 44

MFDR Date Received

November 3, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Memorial Compounding Pharmacy has made numerous attempts to have the attached bills processed. Broadspire has yet to approve or deny our bills."

Amount in Dispute: \$1,827.99

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Payment has been disputed for dates of service 10/26/15, 12/7/15 and 1/28/16 as the medications were not preauthorized."

Response Submitted by: Broadspire

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 26, 2015	Pharmaceutical Services - Baclofen	\$609.33	\$0.00
December 7, 2015	Pharmaceutical Services - Baclofen	\$609.33	\$609.33
January 28, 2016	Pharmaceutical Services - Baclofen	\$609.33	\$609.33

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
3. 28 Texas Administrative Code §133.200 sets out the insurance carrier's procedures for receipt of medical bills.

4. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.
5. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
6. 28 Texas Administrative Code §134.503 sets out the fee guideline for pharmacy services.
7. Texas Labor Code §408.027 sets out provisions related to payment of health care providers.
8. The insurance carrier submitted explanations of benefits with the following claim adjustment codes:
 - 39 – Requires Pre-Auth

Issues

1. Did Memorial Compounding Pharmacy waive the right to medical fee dispute resolution for date of service October 26, 2015?
2. Did American Zurich Insurance Company reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
3. Is Sentrix Pharmacy and Discount LLC entitled to reimbursement for the disputed services?

Findings

1. 28 Texas Administrative Code §133.307(c)(1) states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

The dates of the service in dispute include October 26, 2015. The request for medical fee dispute resolution was received in the Medical Fee Dispute Resolution (MFDR) Section on November 3, 2016. This date is later than one year after date of service October 26, 2015. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file a dispute for this date of services with the Division's MFDR Section; consequently, the requestor has waived the right to medical fee dispute resolution for date of service October 26, 2015.

2. Memorial Compounding Pharmacy (Memorial) is also seeking reimbursement of Baclofen 100%, 60 grams, for dates of service December 7, 2015 and January 28, 2016. In its position statement, Memorial contends that it had not received payment or denial regarding these bills from Broadspire, an agent for Old Republic Insurance Company (Old Republic).

According to Texas Labor Code Sec. 408.027(b), Old Republic was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the pharmacy bill from Memorial.

Corresponding 28 Texas Administrative Code §133.240(a) also required Old Republic to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

(6) Final action on a medical bill—

(A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or

(B) denying a charge on the medical bill.

A submitted fax confirmation page supports that the pharmaceutical bill for date of service December 7, 2015 was initially received by Broadspire on December 14, 2015. A submitted fax confirmation page also supports that the pharmaceutical bill for date of service January 28, 2016 was initially received by Broadspire on February 1, 2016.

Broadspire argued in its position statement on behalf of Old Republic that it was providing an Explanation of Benefits (EOB) supporting the denial of the services in question. Review of the EOB provided for dates of service December 7, 2015 and January 28, 2016 finds that the services reviewed in this EOB were not for Baclofen 100%, 60 grams, which is the service in dispute.

Although there is evidence to support that Broadspire, agent for Old Republic, received a pharmaceutical bill for the services in dispute on December 14, 2015 and February 1, 2016, Old Republic failed to timely take the following actions in accordance with 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

All workers compensation insurance carriers are expected to fulfill their duty to take final action as required by the divisions Laws and adopted administrative rules. The division finds that:

- no evidence was presented to the division to support that Old Republic took final action by paying, reducing, or denying the services in dispute within 45 days; and
- no evidence was presented to the division to support that Old Republic timely presented **any** defenses to Memorial on an explanation of benefits as required under 28 Texas Administrative Code §133.240.

Old Republic's failure to timely issue an explanation of benefits to Memorial creates a waiver of defenses that Broadspire raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that Old Republic raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Old Republic's position statement, as submitted by Broadspire, shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

3. 28 Texas Administrative Code §134.503 applies to the drug in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or

(B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

Each date of service is listed below with its corresponding reimbursement amount as applicable.

Date of Service	Drug	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amount §134.503(c)(2)	Lesser of (c)(1) and (c)(2)
12/7/15	Baclofen Powder	38779038809 Generic	\$35.63	60.0 gm	$(\$35.63 \times 60 \times 1.25) + \$4.00 = \$2,676.25$	\$609.33	\$609.33
1/28/16	Baclofen Powder	38779038809 Generic	\$35.63	60.0 gm	$(\$35.63 \times 60 \times 1.25) + \$4.00 = \$2,676.25$	\$609.33	\$609.33

The total reimbursement is therefore \$1,218.66. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,218.66.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$1,218.66, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____ Signature	Laurie Garnes Medical Fee Dispute Resolution Officer	December 14, 2016 Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.